

[*Scott v. American Protective Services, Inc.*](#), 89-ERA-35 (Sec'y Apr. 26, 1990)

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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON D.C.

DATE: April 26, 1990
CASE NO. 89-ERA-35

IN THE MATTER OF

JOHN SCOTT,
COMPLAINANT,

v.

AMERICAN PROTECTIVE SERVICES, INC.,
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER OF DISMISSAL

Before me for review is a [Recommended] Order of Dismissal issued by Administrative Law Judge (ALJ) Robert G. Mahony on October 26, 1989. That order recommended dismissal of the captioned case, which arises under Section 210 of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1982). The basis for the ALJ's recommendation was a letter of withdrawal submitted jointly by the parties to the ALJ, agreeing to a dismissal of the proceeding with prejudice. Signed by the Complainant and an attorney representing Respondent, and dated September 7, 1989, the letter of withdrawal states: "The undersigned Claimant and representative of Respondent in the above-referenced matter hereby agree that the Complaint herein is withdrawn, with prejudice." In his dismissal order, the ALJ stated: "Upon agreement of the parties, which is incorporated by reference herein, the complaint in the above case is dismissed with prejudice." Because the language used by the parties and the ALJ left open the possibility that an "agreement" of settlement may have been reached, I was obliged to seek clarification. 42 U.S.C. § 5851(b)(2)(A) (1982); 29 C.F.R. § 24.6(a) (1989).

By order of February 15, 1990, I requested the parties to

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submit, for my review, the terms of any settlement agreement that may have been reached in disposition of the case. In his responsive letter of February 21, 1990, counsel for Respondent relates that the September 7 letter of withdrawal reflected "Complainant's desire, as expressed to the Administrative Law Judge, to withdraw the complaint and to have the case dismissed" and that no "settlement" of his claims was involved.

In his dismissal recommendation, the ALJ cited no authority for dismissing Complainant's complaint. Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, however, provides for dismissal of an action, "by filing a stipulation of dismissal signed by all the parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice"

As noted above, the parties in this case have expressly chosen, of their own accord, to have the case dismissed with prejudice. Accordingly, pursuant to Rule 41(a)(1)(ii), I will treat the parties' jointly proposed dismissal as a stipulation of dismissal, which was accepted and approved by the ALJ, and the complaint in this case herewith is DISMISSED WITH PREJUDICE.

SO ORDERED.

Elizabeth Dole
Secretary of Labor

Washington, D.C.